

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN W. BOLSCH AND THERESA BOLSCH,

Case No.: 07 CIV 7680

Plaintiff(s),

v.

MW MECHANICAL, INC.,, HINES INTERESTS
LIMITED PARTNERSHIP AND 140 BW LLC,

Defendant(s).

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MW MECHANICAL, INC.,

Defendant/Third Party
Plaintiff

v.

HINES INTERESTS LIMITED PARTNERSHIP AND
140 BW LLC,

Third Party Defendants

-----x

Defendants, Hines Interests Limited Partnership and
140 BW LLC, by their attorneys, PEREZ & VARVARO, answer the
Amended Complaint of the Plaintiffs by stating as follows:

1. Denies having knowledge or information sufficient
to form a belief as to the truth of the allegations of
paragraphs "1", "2", "3", "4", "5", "6", "7", "8", "9",
"10", "12", "13", "14", "15", "17", "18", "19", "20", "21",
"22", "23", "24", "25", "26", "27", "28", "29", "30", "31",
"32", "33", "34", "35", "36", "37", "38", "39", "40", "41",

VERIFIED AMENDED
ANSWER TO AMENDED
COMPLAINT

"42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "86", "87" and "108".

2. Deny, upon information and belief, the allegations of paragraphs "52", "53", "54", "55", "56", "57", "58", "59", "60", "61", "62", "63", "64", "65", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76", "77", "78", "79", "80", "81", "82", "83", "84", "85", "88", "89", "91", "92", "93", "94", "95", "96", "97", "98", "99", "100", "101", "103", "104", "105", "106", "109", and "110".

3. Respond to paragraph "90", "102" and "107" of the Amended Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE THESE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

4. The injuries alleged to have been suffered by the Plaintiffs were caused, in whole or part, by the conduct of Plaintiffs. Plaintiffs' claims therefore are barred or diminished in the proportion that such culpable conduct of Plaintiffs bears to the total culpable conduct causing the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS
FOLLOWS:

5. That this Court has not acquired personal jurisdiction over the person of these answering Defendants due to improper service.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE THESE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:

6. The Court does not have jurisdiction pursuant to CPLR 302 over these Defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS
FOLLOWS:

7. Pursuant to CPLR Article 16, the liability of these Defendants to the Plaintiffs for non-economic loss shall not exceed the equitable share of these Defendants determined in accordance with the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE THESE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:

8. Upon information and belief the causes of action alleged in the Amended Complaint of the Plaintiffs fail to properly state, specify or allege a cause of action on which relief can be granted as a matter of law.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE THESE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:

9. This action is barred by the principle of collateral estoppel.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS
FOLLOWS:

10. That if it is determined that these answering Defendants are responsible for the acts alleged in the Amended Complaint then Plaintiffs failed to take appropriate action to mitigate any damages.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS
FOLLOWS:

11. The injuries and damages alleged in the Amended Complaint of the Plaintiffs were caused or contributed to by Plaintiffs' culpable conduct in assuming the risk under the conditions and circumstances existing.

AS AND FOR A CROSS-CLAIM FOR CONTRIBUTION AGAINST:
MW MECHANICAL, INC.

12. If any plaintiff recovers against these Defendants, then these Defendants will be entitled to an apportionment of responsibility for damages between and amongst the parties of this action and will be entitled to recover from each other party for its proportional share commensurate with any judgment which may be awarded to the plaintiff.

AS AND FOR A CROSS-CLAIM FOR COMMON LAW
INDEMNITY AGAINST: MW MECHANICAL, INC.

13. If any plaintiff recovers against these Defendants, then these Defendants will be entitled to be indemnified and to recover the full amount of any judgment from the MW Mechanical, Inc.

AS AND FOR A CROSS-CLAIM FOR CONTRACTUAL
INDEMNITY AGAINST: MW MECHANICAL, INC.

14. At the time of the accident alleged in the complaint a contract was in effect between these Defendants and MW Mechanical, Inc.

15. The contract required MW Mechanical, Inc. to indemnify and, or hold harmless these Defendants for all claims, losses, liability and damages for any injury to any person.

16. MW Mechanical, Inc. breached the contract and is obligated to indemnify these Defendants for any judgment or settlement obtained by any plaintiff in this action including defense costs and attorneys' fees.

AS AND FOR A CROSS-CLAIM FOR BREACH OF
CONTRACT FOR FAILURE TO NAME ON INSURANCE
POLICY AGAINST: MW MECHANICAL, INC.

17. At the time of the accident alleged in the complaint a contract was in effect between these Defendants and MW Mechanical, Inc.

18. The contract required MW Mechanical, Inc. to purchase liability insurance for the benefit of these Defendants.

19. MW Mechanical, Inc. failed to purchase the insurance required and thereby breached the contract.

20. By reason of the foregoing, MW Mechanical, Inc. is liable to these answering Defendants for all damages resulting from the breach including defense costs and attorneys' fees.

WHEREFORE, these Defendants demand judgment dismissing the Complaint, together with costs and disbursements, and in the event any judgment or settlement is recovered herein against these Defendants, then these Defendants further demand that such judgment be reduced by the amount which is proportionate to the degree of culpability of any plaintiff, and these Defendants further demand judgment against each other party on the respective cross-claims and/or counter-claims.

DATED: March 19, 2008
Uniondale, New York

Yours, etc.,

PEREZ & VARVARO
Attorneys for Defendants
HINES INTERESTS LIMITED
PARTNERSHIP AND 140 BW LLC
Office and Post Office Address
333 Earle Ovington Boulevard
P.O. Box 9372
Uniondale, New York 11553-3644
(516) 745-8310

By: 
Joseph Varvaro (4224)

To:

Law Offices of Michael J. Asta
Attorneys for Plaintiffs
450 Seventh Avenue, Suite 2205
New York, New York 10123

Cohen, Kuhn & Associates
Attorneys for Defendant/
Third Party Plaintiff
MW Mechanical, Inc.
Two Park Avenue, 6th Floor
New York, New York 10016-5602

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN W. BOLSCH AND THERESA BOLSCH,

Index No.: 07 CIV
7680

Plaintiff(s),

v.

AFFIDAVIT OF SERVICE

MW MECHANICAL, INC., , HINES INTERESTS
LIMITED PARTNERSHIP AND 140 BW LLC,

Defendant(s).

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Index No.:

MW MECHANICAL, INC.,

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HINES INTERESTS LIMITED PARTNERSHIP AND
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Third Party Defendants

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STATE OF NEW YORK)

ss.:

COUNTY OF NASSAU)

Jeanne McEntyre, being duly sworn, deposes and says:

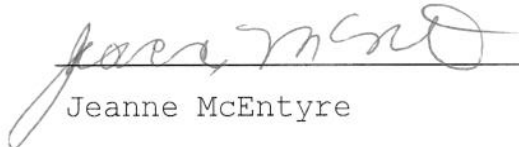
1. That I am over the age of eighteen years (18) and
not a party to this action.

2 That on March 20, 2008, I served upon:

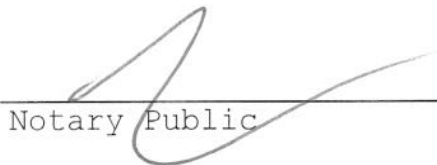
Law Offices of Michael J. Asta
Attorneys for Plaintiffs
450 Seventh Avenue, Suite 2205
New York, New York 10123

Cohen, Kuhn & Associates
Attorneys for Defendant/
Third Party Plaintiff
MW Mechanical, Inc.
Two Park Avenue, 6th Floor
New York, New York 10016-5602

A true copy of the annexed VERIFIED AMENDED ANSWER TO AMENDED COMPLAINT, NOTICE PURSUANT TO CPLR 2103, DEMAND FOR VERIFIED BILL OF PARTICULARS AND VARIOUS DISCOVERY DEMANDS by depositing it endorsed in a postpaid properly addressed wrapper, in a post office or, official depository under the exclusive care and custody of the United States Postal Service within the State of New York, at the address designated by him or her upon the last paper served by him or her in the action.


Jeanne McEntyre

Sworn and subscribed
Before me on March 20, 2008


Notary Public

JOSEPH VARVARO
Notary Public, State of New York
No. 02V45051206
Qualified in Nassau County
Commission Expires 10/31/09